



Regulating Residential Noise: Local government toolkit

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We acknowledge the unique spiritual and cultural significance of land, water and all that is in the environment to Traditional Owners, and recognise their continuing connection to, and aspirations for Country.



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Disclaimer

The information in this publication is for general guidance only. It does not constitute legal or other professional advice and should not be relied on as a statement of the law. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice for your specific circumstances.

Environment Protection Authority (EPA) has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

This toolkit draft was written prior to the proposed Environment Protection Regulations (the Regulations) being made – see [subordinate legislation tools](https://www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation) (<https://www.epa.vic.gov.au/about-epa/laws/new-laws/subordinate-legislation>). Therefore, care should be taken when reading this toolkit, as the final form of the Regulations may be different to the previous Regulations draft that this was based on.

About this council toolkit

EPA has developed this toolkit to support local government (council) officers working in residential noise compliance and enforcement in Victoria. The toolkit explains the legal framework for councils to regulate:

- residential noise under the *Environment Protection Act 2017* (the Act) and Environment Protection Regulations 2021 (the Regulations), and
- noise from the construction, demolition and removal of residential premises under the Act.

It also provides practical tips and advice on how council officers can investigate noise complaints using the Act's risk-based compliance framework. In addition, it includes case studies that highlight the impacts unreasonable noise can have on people.

Noise regulation in Victoria

Along with councils, Victoria Police also have powers to deal with residential noise under the Act. Unreasonable noise from industrial, commercial or trade premises is regulated by EPA. Music noise from entertainment venues is regulated by both Victoria Police and EPA. Figure 1 shows who regulates noise under the Act.

Councils and Victoria Police can also regulate noise under other legislation.

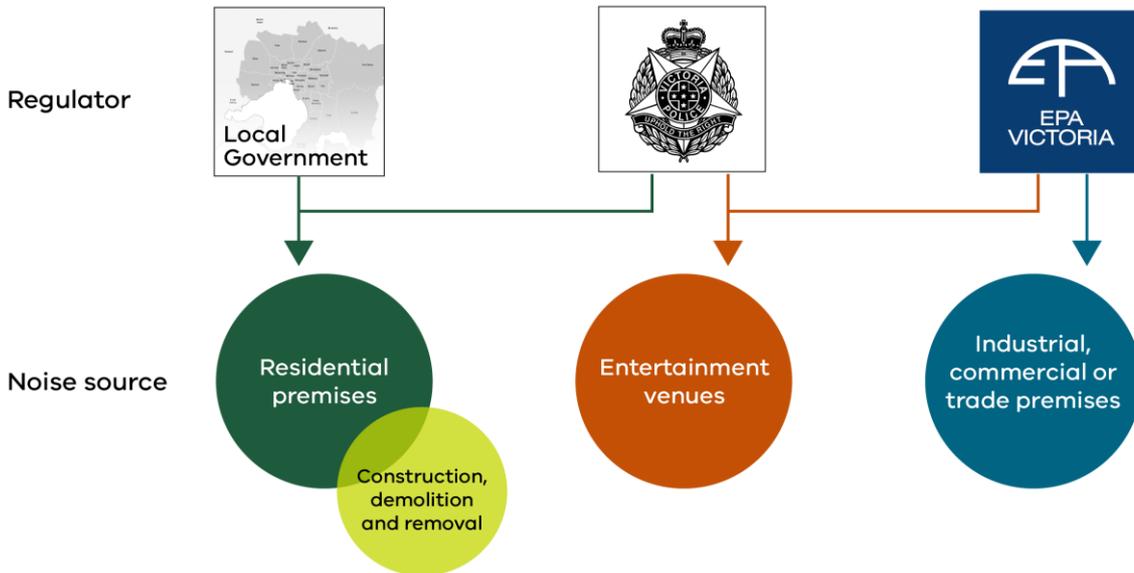


Figure 1: Noise regulation under the *Environment Protection Act 2017*

The environment protection laws have changed

EPA undertook a public enquiry into Victoria’s environment protection laws in 2016. The results showed that Victorians wanted a world-class regulator that prevents harm to the environment and public health and holds polluters to account.

This resulted in new environment protection legislation which comes into effect in July 2021.

The centrepiece of the new Act is the [general environment duty](#) (GED)

(<https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty>). The GED requires everyone to eliminate or minimise impacts to human health and the environment, as far as reasonably practicable.

Local government continues to have a key role in regulating several environmental and human health issues under the Act, including resolving noise issues between neighbours. The new Act provides councils with additional powers and tools to manage residential noise.

Local government also continues its role in regulating residential construction noise. Councils are delegated powers to use the GED to enforce the law on noise from residential construction, demolition and removal of residential premises. This includes land development for residential and mixed-use subdivisions, houses and apartments.

Under the new laws, reducing the risk of harm from noise is the primary obligation of those involved in construction activities. This is a substantial change from regulation based on the use of specific equipment at certain times, depending on what is being built or the stage of construction.

Using this toolkit

Part A explains the laws around unreasonable noise from residential premises (other than construction, demolition and removal of a residential premises).

It details the powers of councils and the appointment of residential noise enforcement officers (RNEOs). It also provides an overview of the approaches for assessing and addressing residential noise complaints.

Part B of this toolkit explains how councils can regulate noise from construction, demolition or removal of residential premises under a delegation of powers from EPA.

It sets out the powers delegated to councils, enabling them to appoint authorised officers and enforce the GED and unreasonable noise (non-residential premises) provisions of the Act.

Use this toolkit with:

- [The Act and Regulations](https://www.legislation.vic.gov.au/) (https://www.legislation.vic.gov.au/)
- [Information about noise](https://www.epa.vic.gov.au/for-community/environmental-information/noise) (https://www.epa.vic.gov.au/for-community/environmental-information/noise)
- [*Construction - guide to preventing harm to people and the environment*](https://www.epa.vic.gov.au/about-epa/publications/1820) (EPA Publication 1820) (https://www.epa.vic.gov.au/about-epa/publications/1820)
- [*Civil construction, building and demolition guide*](https://www.epa.vic.gov.au/about-epa/publications/1834) (EPA Publication 1834) (https://www.epa.vic.gov.au/about-epa/publications/1834)

Part A: Residential noise

Noise is unwanted sound that can be annoying or disturbing. Over time, if the noise continues or is too loud, it can impact people's health and wellbeing.

The impact of noise can be greater when it disrupts a person's sleep. For example, when noise makes it difficult to fall asleep or wakes them during the night. The short-term effects of sleep disturbance from noise include impaired mood, daytime sleepiness and poorer mental alertness or cognitive performance. Long-term disturbed sleep or shortened sleep is associated with negative health outcomes.

Noise can also annoy people. Annoyance is a stress reaction, that in the long term contributes to other negative health impacts. People's reactions to noise can include frustration, anger, exhaustion, agitation and helplessness.

Residential noise can also interfere with how a person uses and enjoys their home. They may be impacted when they try to read, rest, listen to TV or music, spend time outdoors or engage in other quiet activities. While some noise can be expected as a normal by-product of activities around the home, it can become unreasonable depending on how loud it is, how often it happens and when it occurs.

What the law says

The Act defines unreasonable noise and provides for a specific obligation not to emit unreasonable noise from residential premises. It also describes who can investigate and enforce the law, their powers and the action they can take.

Definition of unreasonable noise

In section 3 of the Act, unreasonable noise is defined as noise that:

- (a) is unreasonable having regard to the following:
 - (i) its volume, intensity or duration
 - (ii) its character
 - (iii) the time, place and other circumstances in which it is emitted
 - (iv) how often it is emitted
 - (v) any prescribed factors or
- (b) is prescribed to be unreasonable noise.

Common sources of residential noise

Common sources of problem noise include:

- stereos and radios
- televisions and home theatre systems
- air conditioners
- lawn mowers
- power tools.



Unreasonable noise from residential premises

Section 167(1) of the Act describes the obligation on any individual not to emit unreasonable noise from residential premises, including penalties for non-compliance.

A person must not:

- (a) emit unreasonable noise from residential premises or
- (b) permit an unreasonable noise to be emitted from residential premises.

Section 167(2) provides for what would be considered as unreasonable noise, without limiting subsection (1). Under this section a person is taken to emit an unreasonable noise from residential premises if the person uses a prescribed item, except in the case of an emergency:

- (a) at any time prescribed as a prohibited time and
- (b) if noise emitted by that item can be heard in a habitable room in residential premises other than premises in which the item is being used, whether or not a window or door is open.

For section 167(2):

- Regulation 114 sets out the prescribed items and prohibited times
- A 'habitable room' means a room other than a kitchen, storage area, bathroom, laundry, toilet or pantry (section 167(3)).

Definition of residential premises

Residential premises is a place where a person or people live. It has a specific meaning in Part 7.6 of the Act, Section 165.

In this Part *residential premises* –

- (a) means any premises used primarily for residential purposes, including but not limited to the following:
 - (i) any land, building or appurtenances used for or in connection with residential premises
 - (ii) an outbuilding situated on land used for or in conjunction with residential premises.
- (b) does not include land at any time when construction, demolition or removal of residential premises (other than maintenance or repair of an existing building) is being carried out on the land.

Unreasonable noise

Noise can be considered unreasonable based on any factors, or multiple factors, but doesn't have to be every factor.

Noise can also be considered unreasonable if it's emitted from an item prescribed in the Regulations during prohibited times and can be heard in a habitable room of any other residence.

Importantly, any noise from a residence can be unreasonable at any time of the day.

What residential premises includes

Residential premises include private dwellings such as apartments and houses. It also includes land used for residential purposes such as garden areas, driveways, outdoor entertaining areas and utility areas.

Other locations can also be residential premises depending on the circumstances. They're described in Appendix 1: Other residential premises and include:

- home-based businesses
- organised care accommodation in a residential setting
- short-stay accommodation.

Repair or maintenance of an existing building on residential land falls within the Act's definition of residential premises.

What residential premises doesn't include

Residential premises doesn't include land at any time when construction, demolition or removal of residential premises is undertaken. Examples that distinguish between repair and maintenance and construction or demolition are provided in Part B: Noise from construction, demolition and removal of residential premises.

Construction, demolition and removal of residential premises applies to all scales of activities including:

- residential subdivision developments
- building of new houses and apartments
- single house knockdown and rebuild projects.

Additionally, some parts of apartment buildings are not treated as residential premises. See Appendix 1: Other residential premises for examples.

Who can enforce the residential noise laws

The Act gives powers to councils, residential noise enforcement officers (RNEOs) and police officers to act when unreasonable noise occurs.

People directly affected by unreasonable noise can also take court action themselves under section 170(2)(a) of the Act.

These powers are listed in Table 1: Residential noise laws and penalties.



Councils

The Act provides powers to councils to regulate residential noise issues. Councils can appoint a person who is an employee, or a member of a class of employee, of the council, as a residential noise enforcement officer (RNEO) under section 171 of the Act. This appointment enables council employees to act when residential noise offences occur.

In addition to the powers of RNEOs, councils can issue residential noise improvement notices. These notices are often used to deal with ongoing noise issues. The power to issue this notice sits with council not a RNEO.

Residential noise enforcement officers

RNEOs have specific powers to investigate and act when unreasonable noise occurs (see Table 1). Powers include taking proceedings on behalf of council and issuing infringement notices for residential noise offences and giving an unreasonable noise direction.

Note that council officers who were previously appointed under section 48A(1) of the *Environment Protection Act 1970* to act on residential noise don't need to be re-appointed (section 496 of the Act).

Police

The regulation of residential noise is shared between councils and police. Police officers have many of the same powers as RNEOs under the Act and have access to powers of entry via the courts which aren't available to councils or RNEOs.

Police can also respond to residential noise complaints outside of business hours, such as party noise.

Police officers can assist council RNEOs in their investigation of noise complaints by gaining access to residential premises, or providing protection if noise makers are displaying anti-social or threatening behaviour.

Residential noise laws and penalties

Table 1 sets out the provisions under the Act relating to residential noise and the associated penalties for non-compliance. It also lists the powers of councils, residential noise enforcement officers and police to act when non-compliance occurs.

Table 1: Residential noise laws and penalties

Act Section	Summary of provision	Powers	Who can enforce?	Maximum court penalty in penalty units	Infringement penalty in penalty units	Infringement offence code
167(1)	A person must not emit, or permit to be emitted, unreasonable noise from residential premises. Infringement offence* Section 167(1), in the circumstances set out in section 167(2) (use of a prescribed item during a prohibited time).			120 (natural person)	2 (natural person)	0222
				600 (body corporate)	10 (body corporate)	0223
170(2)(a)-(c)		Take proceedings for an offence against s167(1) – unreasonable noise from residential premises	RNEO, Police officer, or Person claiming to be directly affected by the alleged offence			
307		Issue an infringement notice in relation to an infringement offence* under section 167(1)	RNEO or Police officer			
175		Give an unreasonable noise direction (in effect for 72 hours).	RNEO Police officer			
175(4)	A person must comply with an unreasonable noise direction given by a police officer or residential noise enforcement officer.			120 (natural person)	5 (natural person)	0228
				600 (body corporate)	25 (body corporate)	0229
170(4)		Take proceedings for an offence against 175(4)	RNEO or Police officer			

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Act Section	Summary of provision	Powers	Who can enforce?	Maximum court penalty in penalty units	Infringement penalty in penalty units	Infringement offence code
307		Issue an infringement notice in relation to an infringement offence* under section 175(4)	RNEO or Police officer			
172		Issue a residential noise improvement notice	Council			
172(6)	A person issued with a residential noise improvement notice must comply with the notice.			120 (natural person)	5 (natural person)	0226
				600 (body corporate)	25 (body corporate)	0227
170(6)		Take proceedings for an offence against section 172(6)	RNEO			
307		Issue an infringement notice for an infringement offence* under section 172(6)	RNEO			
174		Apply to a Court for an injunction relating to residential noise.	Council or Police officer			
176		Apply to a court officer for an order to enter residential premises to investigate unreasonable noise.	Police officer **			
177	A person must not obstruct a police officer.			60 (natural person)	N/A	N/A
				300 (body corporate)		
170(5)		Take proceedings for an offence against section 177	Police officer			

* Infringement offences are listed in Schedule 10 of the Regulations. ** Police officer must be of or above rank of senior constable

Regulatory approach for residential noise complaints

As an RNEO, you might receive reports or complaints about residential noise across a wide range of situations. For example:

- You may be dealing with a person who has only recently started to hear a noise and be disturbed by it – right through to cases where a person’s health has been severely impacted by ongoing noise.
- The attitude of the person making the noise is also important. You might encounter someone who isn’t aware they’re causing a problem – to someone who’s using noise to aggravate or harm their neighbour.
- Dependent on the situation, you need to choose from approaches such as providing information and education to people to resolve the issue between themselves – through to enforcement action.

In the next sections recommended approaches are provided to help council officers apply discretion and judgment in response to a range of circumstances.

Process for investigating residential noise complaints

Most residential noise investigations start with a report or complaint to council. As an RNEO you’d then follow these stages:

- Stage 1: Initial investigation to understand the problem
- Stage 2: Site assessment to assess the noise
- Stage 3: Using compliance and enforcement tools to address non-compliance.

There is no single approach for every situation. The nature of the noise problem and the attitude of the noise maker will inform your actions. For example, the length of investigations and level of effort you make to educate and support neighbours to resolve issues themselves, before you consider taking enforcement action.

Use the following guidance and Appendix 2: Investigation flowchart, along with your council’s investigation procedures.

Stage 1: Initial investigation

<p>Purpose</p>	<ul style="list-style-type: none"> • Understand the nature of the noise issue, such as its severity, impact and how often it occurs. • Understand the people involved, such as the attitude of the noise maker, any attempts to resolve the issue and the sensitivities of the person who's impacted. • Decide the kind of response to start with, including direct compliance responses, speaking to affected people, or use of diaries to establish a noise pattern, if required.
<p>Approaches</p>	<ul style="list-style-type: none"> • Speak with the noise-affected person. • Share information about noise, its impacts and the law. • Discuss the issue with the alleged noise maker. • Respond within a reasonable time and move to action where possible. • Show sensitivity to the noise-affected person and consider the impacts to their health. • Explain the scope of the law and compliance pathways.
<p>Questions to ask yourself</p>	<p>Review the notes given to you about the incident:</p> <ul style="list-style-type: none"> • is there enough information about the noise issue? • is there a known noise source? • has the person reported noise issues to council before? • will I need to meet on-site with the person affected by the noise? • what further information do I need?
<p>Decision</p>	<p>You'll need to decide what type of educative or enforcement response to take. In many cases you'll have enough information to provide direct advice to the noise maker, or to issue an unreasonable noise direction (s175). In a few cases, you may need to take a longer-term approach to establish a pattern of noise before you take further action. Follow your existing investigation and interview procedures.</p> <p>To support your approach, refer to the section below which provides further information and considerations for communicating with noise-affected people.</p>

Communicating with noise-affected people

How you communicate with the person affected by the noise can be as important as getting the noise stopped or reduced. Build trust with the person who's reported the noise by acknowledging their frustration. They may have suffered with the noise problem for some time and their health and wellbeing may be being affected.



Be open in your communication. Explain the role of council in regulating noise and the likely outcomes they can expect. It's important to manage the person's expectations around what can be achieved. For example, sometimes even when the noise is reduced to comply with the law, there may still be a level of noise. If people don't understand what outcomes can realistically be achieved out of the investigation, they may continue to be aggrieved even when the noise is reduced.

When you've finished your investigation speak to the person who reported the noise. Explain the outcome of the investigation to them, including the reasons why enforcement action was or wasn't taken by council.

Understand the health impacts

Noise is a subjective experience and the impact can range from a minor disturbance or irritation through to a substantial loss of quality of life and even to profound debilitation. People have a wide range of sensitivity to noise, which means noise doesn't have to be particularly loud to affect some people. Some residents may be impacted even if a noise doesn't sound very loud.

In determining what action to take, listen to the person's account of how the noise is affecting them. Take the negative impacts to their health into consideration along with the factors covered in Assess the noise using the definition in the Act.

Communicating with people emitting noise

Always be courteous, remembering that they may not be aware they're causing a problem for their neighbours, or their children or teenagers may be the cause. If the resident doesn't answer to your knock, leave a card for a call back.

Start by identifying yourself and show your ID if asked. Explain that unreasonable noise is an offence and that they may be emitting unreasonable noise which is impacting other people.

Avoid being overbearing or getting involved in an argument and be sure to act within your powers. RNEOs have no powers of entry to residential premises. If a person is known to be aggressive, request assistance from the police. If you do need to take further enforcement action, explain what action you intend to take.

If appropriate, use the below information and publications to educate and inform noise emitters and noise-affected people.

- [Annoyed by noise](https://www.epa.vic.gov.au/about-epa/publications/406-8) (EPA Publication 406.8) (<https://www.epa.vic.gov.au/about-epa/publications/406-8>)
- [Cool air: Quietly and efficiently. A guide to buying and operating an air conditioner](https://www.epa.vic.gov.au/about-epa/publications/1176-1) (EPA Publication 1176.1) (<https://www.epa.vic.gov.au/about-epa/publications/1176-1>)
- [Reduce noise from your home](https://www.epa.vic.gov.au/for-community/environmental-information/noise/residential-noise/reduce-home-noise) (<https://www.epa.vic.gov.au/for-community/environmental-information/noise/residential-noise/reduce-home-noise>)

Contemporaneous notes

It's important to take contemporaneous notes. These are the notes you take during your investigation about what you saw and heard, including any conversations. They become an official record and can act as important evidence to support enforcement action. Take notes at the time you observe the actions taking place and always keep your original notes.

Your notes may be needed to:

- complete a report, statement or affidavit – all of which can be used as evidence
- provide details that support enforcement action, such as issuing infringement notices and other notices
- form part of evidence that an officer gives in court when they are unable to rely solely on their memory to answer questions.

Stage 2: Site assessment

The information provided by the person reporting the noise forms part of the evidence you'll use to assess the noise. There may be enough information for you to talk to the person suspected of emitting noise and potentially resolve the matter.

However, if you believe a site assessment is required or if there's an ongoing noise issue, do this before taking further action.

<p>Purpose</p>	<ul style="list-style-type: none"> • Assess the noise in person if possible. • Decide if unreasonable noise is being emitted. • Resolve the issue through discussion with the parties, or • Decide whether you consider the tests in the Act are met for issue of an unreasonable noise direction (s175), residential noise improvement notice (s172) or infringement notice.
<p>Approaches</p>	<ul style="list-style-type: none"> • Plan your visit to maximise your chances of making a valid assessment – consider the timing, recurrence and nature of the noise. • Listen to the noise and consider the definition of unreasonable noise and the grounds for notices and directions. • Speak with the noise maker. • Measure the noise only when required to back up your assessment. • Draw on supporting evidence such as diaries and corroboration, only when required. • Avoid lengthy investigations. Use lower-level compliance and enforcement tools where appropriate. • Consider the reasonable needs of noise makers and those impacted. • Use approaches that reflect the noise maker's attitude and the noise's impact on the sufferer. • Where appropriate, equip people to resolve issues.
<p>Questions to ask yourself</p>	<ul style="list-style-type: none"> • Is there a clear pattern of the noise to guide my attendance approach? • Is there a time of day that's best to assess the noise? • What do I need to consider about the attitude or behavior of the noise maker? • Do I know enough to take regulatory action?
<p>Decision</p>	<p>Use the information in the 'How to assess if noise is unreasonable' section below to help you make an assessment against the definition of unreasonable noise.</p> <p>Follow your council's own investigation and interview procedures.</p>

How to assess if noise is unreasonable

Noise from residential neighbours can impact people in their homes. These effects can include sleep disturbance and interference with domestic activities. It can also cause a range of negative emotions or reactions. Even though these effects can occur, they're not the test of whether the noise is unreasonable.

To decide whether unreasonable noise is being emitted, assess the noise using:

- the prescribed items and times in Regulation 114, or
- the factors to consider for unreasonable noise set under **section 3 of the Act**.

The test for whether the noise is unreasonable using the Regulations is straightforward and based on:

- whether the noise is emitted from a prescribed item listed in Regulation 114 at a corresponding time, and
- is audible within a habitable room of any other residence.

In special cases, such as an emergency, or a heat health alert, some noise sources listed in the Regulations are not prescribed to be unreasonable noise.

Figure 2 shows how to assess noise using the Act and Regulations together.

It's important to note that noise from prescribed items can be unreasonable outside of the prohibited times, under the definition of unreasonable noise. Unreasonable noise also applies to noise types not listed in the Regulations, such as ongoing and frequent clanging gates or shutters in the early morning.

What the affected person says about how the noise interferes with their activities at home can help you decide whether the noise is unreasonable. For example, the affected resident might describe the need to increase the sound of their TV to hear it over the noise. This disturbance to an ordinary activity can indicate that the noise is unreasonable as it's too loud.

Air conditioner use during a heat health alert day

Prohibited times for the use of air conditioners are set out in Regulation 114. They don't apply on a day that a heat health alert is declared by the Chief Health Officer.

This means that air conditioner use is not prescribed as unreasonable noise from residential premises, up until midnight on the day of a health heat alert.

However, if the noise from the air conditioner used during a heat health alert period is excessively loud and/or rattly for example, it might still be unreasonable based on those factors.

Remember that any noise at any time can be assessed as unreasonable if the factors of unreasonable noise are evident.

How to decide if the noise is unreasonable

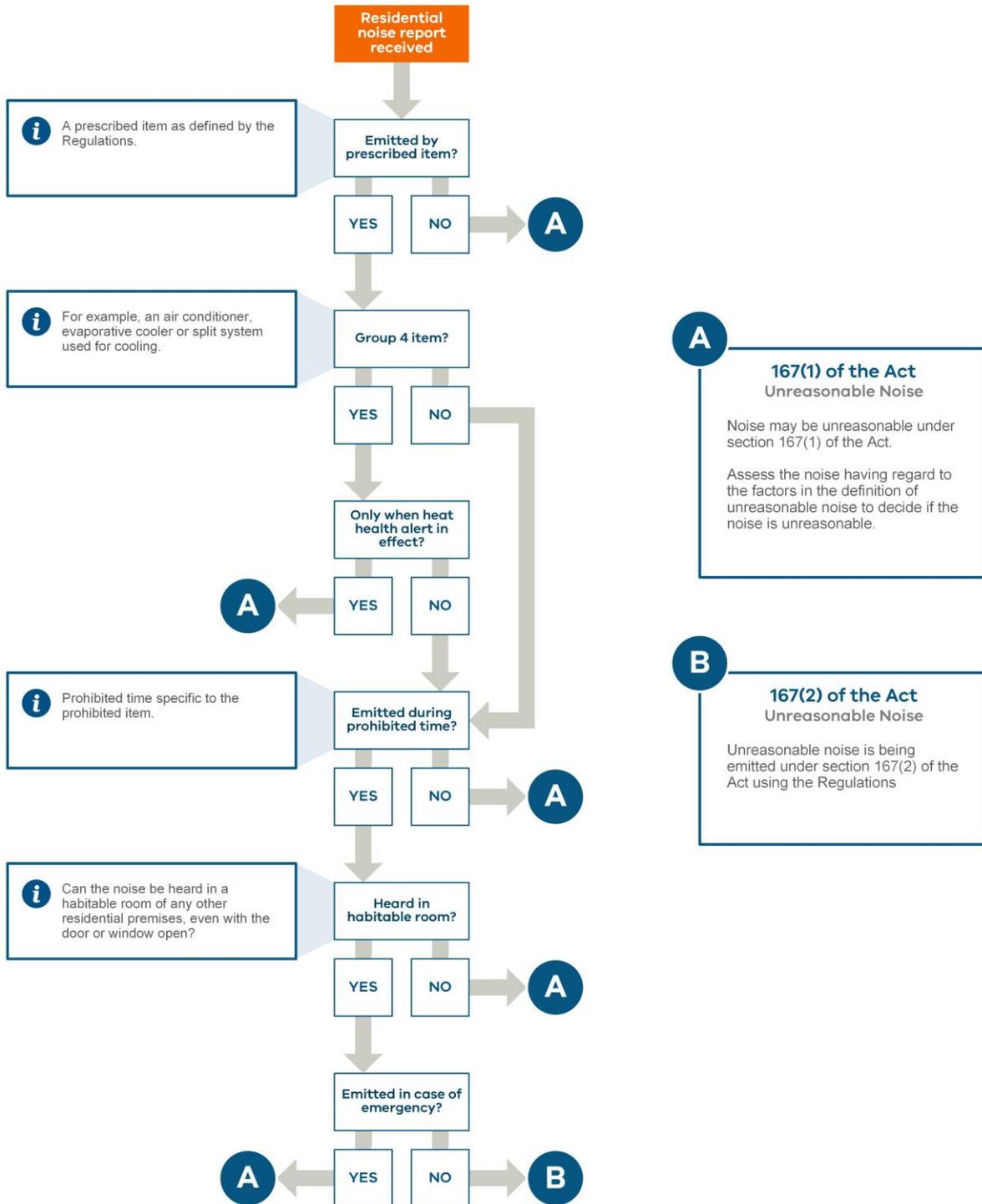


Figure 2: Assessing if noise is unreasonable

Assess the noise using the definition in the Act

Under section 3 of the Act, unreasonable noise is noise that is unreasonable having regard to:

- how intense or loud it is – its intensity
- how far it spreads – its volume
- what the noise sounds like - its character
- how long it continues – its duration
- how often it is emitted and
- the time, place and other circumstances in which it's emitted.

Each of the factors and how they're assessed is described below. Noise can be assessed as unreasonable based on any factor – not every factor. Sometimes the noise might be a combination of factors, for example a tonal droning sound that can be heard in the outdoor area and within the living and bedrooms may be unreasonable because of what the noise sounds like (its character) and that it spreads widely throughout the affected residence (its volume).

Intensity

Intensity means how loud the noise is. Intense noise can be very intrusive. It can disturb sleep and everyday activities such as reading, watching television or having a conversation. You can gauge intensity by:

- the disturbance to the affected person's daily activities
- by listening and comparing the loudness of the noise to other sounds in the neighbourhood or within the residence or
- measuring it in decibels.

Noise is too intense if it's the dominant sound is heard over background sounds. For example, if it's loud enough to cause people in the area to move away or raise their voices to hold a normal conversation.

Some normal domestic activities are unavoidably loud, such as using lawn mowers or powered garden tools. If outside of the prohibited times, consider how long the noise continues and how often it occurs. These factors will help you to decide if the noise is unreasonable.

When noise is very loud, it can also cause structures to vibrate or rattle - worsening the impact.

A resident describes the impact of an extreme case of unreasonable noise:

"We had loud music from morning until night. Sometimes almost 24 hours a day. You couldn't sleep, you couldn't think, you couldn't watch your tele, you couldn't read. I used to go to bed with cushions and things wrapped around my ears, and you could feel the floor going boom, boom, like this."

"Because I could feel it pumping through my body. I could feel it vibrating my organs. I could feel it in my head, just shaking everything or shaking our windows."

Volume

Volume means how far the noise spreads throughout the affected home, both indoors and out. It can be a problem where noise travels throughout the building (especially in apartments) or if

it's low-frequency sound. Having nowhere to escape from the noise increases its impact on people.

Assess volume by:

- asking the affected resident where the noise is heard at the home, both inside and outside
- listening to the noise in different areas of the affected residence, noting which areas are impacted by the noise.

The noise doesn't need to be loud in all areas to be unreasonable. Volume considers the presence of noise throughout the home and the need for areas to be free from intruding noise.

Noise that has particularly high volume would be heard in more than one adjoining residence. Ask the neighbours whether they can also hear the noise and where in their property it can be heard.

Character

Character means what the noise sounds like. Noise with unpleasant character is more disturbing than noise of the same loudness without the character. The character of the noise is:

- tonal if it can be described as squealing, whining, humming, droning or throbbing
- intermittent if it suddenly becomes noticeably louder and maintains the louder level for at least one minute
- impulsive if it has a sudden burst of sound that can be described as banging, hammering or thudding
- a rattle if it has a rapid succession of short, sharp sounds, usually from something shaking or vibrating.

Residents describe the impact of high-volume noise in exceptionally severe cases

"... I have nowhere else to go to escape this noise ... It makes me feel incredibly tense."

"It's not only us, we're their next-door neighbours, but the neighbours above, even like two or three floors above. It seems like the noise just travels up as well... it goes, literally, for [the whole length of the] apartment."

"It goes through his whole place, through my whole place and out the other side."

Residents describe the impacts of noise with character:

"We live in the country and you'd get a nice weekend and want to spend it in outside, then you'd end up with the neighbour's twelve dirt bikes running around their property... the windows would be shaking."

In this case, the noise is unreasonable due to the unpleasant sound of the dirt bikes – the tonal sound and the increase and decrease in level (intermittency), combined with the intensity of the noise causing the windows to shake and rattle.

Duration

Duration means how long the noise continues. Assess duration by determining how long the noise continues and whether there are sufficient breaks in it to provide rest or relief.

Your assessment of duration can be supported by:

- a diary or notes from the affected person documenting when the noise starts and stops
- a recording of the noise taken over a longer period – a few days to a week.

Duration of the sound is a relevant consideration when there's an element of choice by the noise maker, rather than necessity. For example, a lawn mower is noisy, but it usually stops when all the grass is mowed – the duration is often short, so it's reasonable.

Noise for a longer duration that occurs for a substantial proportion of the non-prohibited hours would be unreasonable, unless there are breaks to provide rest and relief from the noise. Also consider how often the noise recurs and whether it's from a short-term project or an ongoing activity.

Residents describe the impact of unreasonable noise with a long duration without respite:

"... My blood pressure went up to the degree where I was in some trouble and had to go to hospital because I had no relief unless I actually left my house and went somewhere else."

"On Saturday, she'd start around about 9 am and plays until around about 9.30 pm. There might be a half an hour break here and there, or an hour break here and there."

In this case, daily music practice unreasonably continued for almost all hours other than the prohibited times (10 pm – 7 am) leaving minimal time for the affected resident to enjoy their own home. Daily music practice of shorter duration, such as a few hours, could be reasonable providing it wasn't too loud or spread too far through the affected home.

For noise from equipment that typically operates for long periods such as for heating and cooling, consider the intensity and character of the sound, rather than its duration, when deciding if the noise is unreasonable.

The impact of recurring and ongoing noise can be severe

"We were always on edge as we didn't know when the music would start, how long it would go for and when it would stop."

How often the noise is emitted

This factor means how often the noise recurs. Frequently occurring noise can be a problem particularly when it happens day after day, or every weekend.

Infrequently recurring noise can also impact on people for months or years, as it can be difficult to assess. Uncertainty about when noise will occur and when it will stop can also lead to heightened anxiety. What may not be recognised is that these impacts often remain even when the noise is not occurring. This can be the case with unresolved issues, especially long-term, unpredictable noise.

How often the noise is emitted can be assessed by:

- a diary or notes from the affected person documenting when the noise occurs
- a recording of the noise taken over a longer period – a few days to a week.

In extreme cases where noise is unreasonable, the impacts on residents can be substantial.

“There was one time where it was like eight days in a row, eight nights, it just went on and on and on, and poor ‘Joan’, we ended up having to take her to the hospital. She ended up with high blood pressure, she just got stressed right out, that was it, off to the casualty. It was terrible.”

“It goes on and it goes on and it goes on. Usually for about eight to ten days, night after night...”

Residents also describe the impact of recurring noise:

“You’re saying, ‘God, are the motorbikes going to start up?’ So even though they’re not there, you’re on edge because you don’t know... you think, ‘next ten minutes will tell. Is he going to get out on the bike or isn’t he?’ And like I say, it’s not [just] when the noise is going, you’re on edge all the time.”

Recurring noise (even if not continuous) can severely impact upon people and needs to be considered.

The time, place and other circumstances in which it is emitted

Time means when the noise occurs. Noise at night and in the early morning hours can disturb sleep. The Regulations prohibit the use of certain items of equipment during the late-evening and night if they can be heard in another residence. Noise from sources not listed in the Regulations can also be unreasonable if occurs at times when people normally sleep.

The time that noise occurs can be understood from:

- a diary or notes from the affected person documenting when the noise occurs
- a recording of the noise taken over a longer period – a few days to a week.

Noise from animals and the law

When animals disturb neighbours with noise, local council officers can use the *Domestic Animals Act 1994* to investigate or prosecute. This includes noise from barking dogs.

It’s an offence for the person living in the house to let their animals make persistent noise that disturbs people.

Noisy domestic animals can also be unreasonable noise under the *Environment Protection Act*.

Residents describe the impact of night-time and early morning noise:

“So, they started doing up their house last November and after three weeks, when they started it, I think it's there at 6.30 am. They might pull up at six o'clock and listen to the radio or have a cuppa or rattle some chains or move some equipment or do something. Then things get sort of started by 6.30, seven o'clock.”

Time can also be considered if the affected resident needs rest or sleep at times when others are usually awake. For example, those with young children, people with chronic illness and shift workers may need to sleep during the day. If applicable, take this into account in your assessment.

Place refers to whether the activity is fitting or expected within the residential setting. For example, riding trail bikes might reasonably be expected to occur at times on a rural property. However, it would be unexpected within a built-up urban area and doesn't fit with the context in which the noise is heard. Even in rural settings, noise from trail bikes can be unreasonable if it's too loud, happens too often or continues too long.

As noise is emitted from normal residential activities, other circumstances can be considered when deciding if the noise is unreasonable. Other circumstances can be a determining factor making the noise unreasonable if it's being emitted to harm, irritate, or get at residents as part of an unrelated neighbour dispute. For example, an unrelated dispute about trees, fences or parking. That is, the noise is being emitted to make life unpleasant in response to an actual or perceived wrong. This can be described as “tit-for-tat” behaviour. While enforcement of unreasonable noise is an option in this case, more benefit might be gained by referring the neighbours to mediation.

Another aspect of other circumstances includes whether the noise emitter has tried to reduce the noise impacts or install controls.

This could be relevant where the noise from fixed equipment is marginally (about 1-2 dB) above the guideline level in *Noise Guidance: Assessing noise from residential equipment* (not yet published) and noise control has been installed. Further noise reduction to meet the guideline level will cost proportionally more and the reduction would not be audibly noticeable. This isn't a valid consideration if noise control hasn't been implemented and the equipment could be relocated or replaced to eliminate the unreasonable noise.

Approaches to assessing noise

Stage 2 Site assessment lists approaches to assessing noise. The noise needs to be assessed at an appropriate time and place. You'll need to consider the circumstances of the noise emission and listen to the noise. While an assessment may include noise measurements, in most situations noise measurements won't be needed.

Assessment time

Assess the noise at a time and under the circumstances that represent the likely worst case of impact. Consider:

- when the noise is likely to be occurring
- when the noise most impacts upon the affected resident

- other sounds that may be present at the time such as background sounds.

Background sounds are normally lower in the evening than in the day and are usually highest during periods of peak traffic. Residential noise will be more intrusive when background sound levels are lower. So, if the noise affects a neighbour in the late evening, make your assessment at this time.

Likewise, if noise interferes with use of an outdoor entertainment area, make the assessment at a time when the area would be used, either during the day or in the early evening.

Assessment place

The assessment location must represent the relevant indoor and/or outdoor area affected by the noise of interest.

Relevant outdoor areas

These areas are parts of the residential property used by the affected resident for recreational and domestic activities such as rest and enjoyment. This includes gardens, outdoor entertaining areas and courtyards. It excludes areas not normally used for rest, recreation or enjoyment, such as an access walkway, or a utility area.

Relevant indoor areas

These areas include habitable rooms, such as bedrooms, living areas and study areas. Relevant indoor areas are not limited to habitable rooms but may exclude infrequently and briefly used rooms, such as a laundry or storage area.

Listen to the noise

Listening to the noise will help you decide if it's unreasonable using the definition in the Act. Either listen to the noise, or a noise logger recording and consider:

- Can the noise be heard within relevant areas (indoor or outdoor) of the affected residence? How far does the noise spread throughout the affected residential premises? In which rooms or areas of the residence can you hear the noise?
- Is the noise at a level that would prevent the affected resident(s) from enjoying their own home? Does it impact their ability to watch television, have a conversation, or focus on tasks such reading or studying?
- What other sounds can be heard and at what level relative to the noise being assessed? Note whether traffic noise is much louder than the noise being assessed, or if the noise being assessed can be heard clearly over other sounds.
- How long does the noise continue during your site visit, or during the noise logger recording?
- Does the noise continue at the same level? If the noise you hear is not continuous at the same level, note the pattern of noise recurrence.
- What does the noise sound like and does it have character that people find disturbing?

What you hear and observe, plus your contemporaneous notes will provide evidence for any interventions (stage 3) you might make.

Noise diaries

Seeking a noise diary from the affected person can be useful if your initial investigation (stage 1) shows that a longer-term approach is needed to establish a pattern of noise before you take further action.

Noise diaries can indicate a pattern of noise that warrants attendance or the use of noise loggers. They're useful if the noise is sporadic, occurring occasionally across the week with no immediately obvious predictable pattern.

Encourage the noise reporter and other affected persons at their address to keep a log of the instances of noise over the next 14 days or so. Ask them to provide enough detail and record as many occurrences of the noise as possible. Explain that this will help you to gather evidence to see if any pattern is established so you can develop a response strategy based on the likely times the noise occurs.

Check back after approximately 14 days to see if any pattern has been established. This helps determine the best time to conduct any site visits.

Noise diaries should be kept just long enough to demonstrate the occurrence of the noise and be proportionate to the severity of impact. Avoid open-ended or inconclusive use of them.

A noise diary can provide supporting evidence when deciding if the noise is unreasonable based on its time, duration or how often it's emitted.

If the noise is predictable or continuous, a diary might not be needed as evidence. If the noise is severe, waiting for a diary would only delay the investigative action.

Role of noise measurement

In most cases, residential noise can be assessed without using measurements. Noise measurements are most useful when assessing noise from fixed residential equipment.

Noise loggers can measure noise levels and record sound continuously for around a week. They're battery powered, robust boxes with a pole-mounted microphone. They can be set up, locked and left at the affected residence, even outdoors, to be picked up at a later date.

Noise logging with sound recording can be useful to:

- establish if there may be a pattern sufficient to establish an appropriate time for a site visit
- back-up your observations, such as to show that the noise you heard continued for longer periods after you left
- confirm that the noise persists after you've given advice to the noise maker
- help you when deciding if the noise is unreasonable based on its time, duration or how often it's emitted.

When assessing noise emitted from prescribed items during prohibited hours under the Regulations, the noise needs to be assessed within a habitable room. For all other assessment, place the logger outside at the affected residence.

When setting up a noise logger tell the resident that the logger records sound and anything they say could be recorded. Ask them to keep a noise diary for the period of logging as it will help you interpret the sounds that are heard on the recording.

Stage 3: Tools to address non-compliance

With an understanding of the issue, take proportionate action to resolve it. It's important to understand the range of compliance and enforcement tools and approaches available and provide appropriate and proportionate responses to each noise complaint.

<p>Purpose</p>	<ul style="list-style-type: none"> • Remedy the issue, to the extent possible. • Decide whether to punish or sanction the noise maker. • Equip those responsible for the noise to manage it in future.
<p>Approaches</p>	<ul style="list-style-type: none"> • Provide information and education reinforced by warnings of enforcement action where relevant. • Give a direction for short term abatement if it suits the type of noise – section 175. • Issue an improvement notice for a longer-term remedy of the problem – section 172. • Issue an infringement notice for emitting unreasonable noise or breach of an unreasonable noise direction or notice. • Prosecute through the Magistrates Court. • Seek a court injunction – section 174. • Choose your approach based on the seriousness of the issue. • Be fair and consider the power imbalances between individuals. • Use approaches that reflect the noise-maker's attitude and the impact of the noise on the sufferer. <p>Read more in Choosing a compliance and enforcement approach and Appendix 3: Compliance and enforcement tools for residential noise.</p>
<p>Questions to ask yourself</p>	<ul style="list-style-type: none"> • Do I have sufficient evidence to justify an enforcement response? • What's the most appropriate response given the attitude or behavior of the noise maker? • What tool or approach, or mixture of approaches will provide an enduring remedy?
<p>Decision</p>	<p>Ensure that you make a proportionate decision. Tools and approaches vary from advisory through to regulatory interventions.</p> <p>Figure 3 outlines the tools available following the model of responsive regulation. Responsive regulation guides officers to use an approach that reflects the behaviour of those causing the non-compliance.</p> <p>Table 2 will help you to choose the right compliance and enforcement tool for the situation.</p>

Choosing a compliance and enforcement approach

When you're considering the compliance and enforcement options for residential noise, your approach should be dynamic and respond to the behaviour of the noise maker.

For example, although you might routinely start with guidance, it might be appropriate to issue an infringement notice to someone with an established pattern of deliberate breaches of the residential noise laws. Table 2 will help you to choose appropriate approach and tools for the situation.

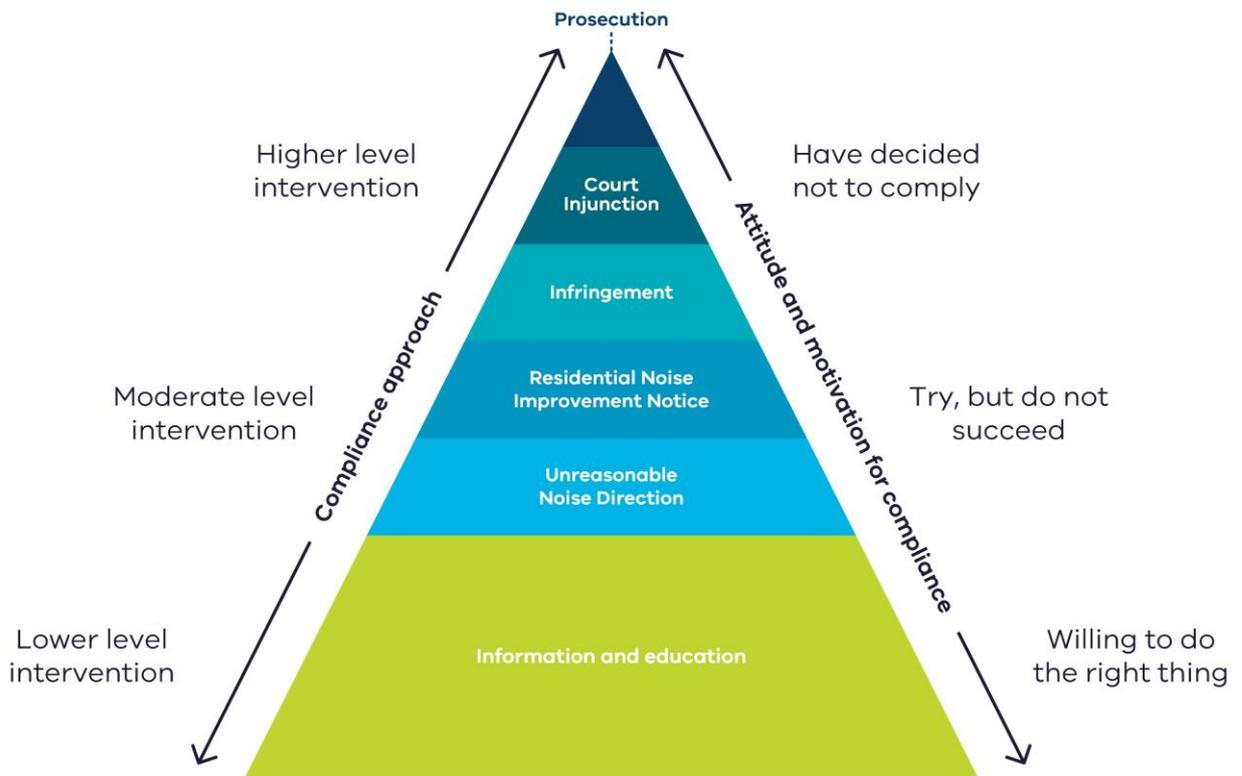


Figure 3: Compliance and enforcement approach to residential noise

Table 2: Compliance and enforcement tools for residential noise

Level	Type of intervention	Suitable situations	Unsuitable situations	Other considerations
Lower level	Information and education	Where the individual was unaware of the impact of the noise on a neighbour and where the impact is intermittent or low.	Repeat offenders and deliberate actions to emit noise	Level of harm to an individual or neighbourhood.
Moderate level	Unreasonable noise direction (section 175)	Where the noise has had a significant short-term impact and needs to stop, but there is evidence of contrition and a desire to rectify the situation.	Circumstances where there is evidence of sustained or repeated non-compliance. Where issues are identified that reasonably require some time to comply, such as repairing or replacing residential equipment.	Consider the timeliness of this approach and the likelihood of compliance based on details of the incident.
	Residential noise improvement notices (section 172)	Where a particular noise source has been identified and needs to be rectified, such as a pool pump or air conditioner.	Short term, intermittent noise that is disturbing but largely rectified by a change in behaviour, such as playing music loudly or at late hours.	Consider this option for repeated offences by different people at the same premises when a longer-term solution is needed. Such as in short-stay accommodation.
	Infringement notices	Where guidance or previous directions to cease emitting noise or notices have been ignored, or where the noise is high impact (such as early morning or late at night)	One off/accidental or low impact.	This generally shouldn't be the first enforcement tool. But it might be, depending on attitude of the noise maker or the level of harm. Consider issuing an official warning rather than an infringement notice. Under section 8 of the Infringements Act, any issuing officer may serve an official warning rather than an infringement notice, if they consider it appropriate to do so.

Higher level	Prosecution (Magistrates Court proceedings)	Ongoing or repeat residential noise where the impact is high and directions or notices have not been complied with. Or where an infringement notice has been ineffective in stopping the noise.	One off/accidental or low impact. Where a direction, remedial notice or infringement notice has worked to stop the noise.	Prosecution can be initiated in parallel with other interventions such as notice or direction.
	Injunctions relating to residential noise (section 174)	Ongoing or repeat residential noise where the impact is high, and directions or notices have not been complied with. Or where behaviour has not been deterred by an infringement penalty.	One off/accidental or low impact. Where a direction, remedial notice or infringement notice has worked to stop the noise.	Due to the costs involved in going to court to seek an injunction and the serious consequences for not complying with an injunction- they should be used for only the most serious occurrences. An injunction can be used in parallel with prosecution.

Aggravated noise

Aggravated noise (Section 168 of the Act) is a more serious offence and significant penalties apply. If a council officer is investigating an incident that they believe may contravene this law, they should refer the matter to EPA who can take enforcement action.

Section 168 Aggravated noise

A person must not emit or permit to be emitted noise that is prescribed as aggravated noise.

Under **Regulation 115**, for the purposes of section 168 of the Act, noise emitted from residential premises is prescribed to be aggravated noise if the noise:

- a. arises from the use of an item listed in the table Regulation 114 (unreasonable noise from residential premises) at a prohibited time, **and**
- b. results, or is likely to result, in harm to human health or the environment.

To prove this offence, evidence is required to prove harm or the likelihood of harm to human health or the environment, not just that unreasonable noise has been emitted. For example, the noise has resulted in ongoing sleep disturbance.

The aggravated noise law provides additional penalties for the most serious occurrences of residential noise, such as ongoing and very loud or intrusive night-time noise.

In some instances, council may have previously taken enforcement action for unreasonable noise from residential premises, or under the nuisance provisions of the *Public Health and*

Wellbeing Act 2008. Where the offending continues despite council enforcement action, with continued impacts on neighbours, including harm or likely harm to their health, the penalties for aggravated noise may be a more effective deterrent.

Who can act against aggravated noise?

Neither Councils, RNEOs or police have powers to take enforcement action for aggravated noise. Only EPA can take this action. If you believe that aggravated noise is being emitted, contact EPA.

Part B: Noise from construction, demolition and removal of residential premises

Part B of this toolkit deals with noise from the construction, demolition and removal of residential premises (residential construction noise). Residential construction noise is **not** regulated under the residential noise laws discussed in Part A. Instead, residential construction noise is covered under the general environmental duty (GED) and section 166 of the Act that prohibits unreasonable noise from non-residential premises.

A delegation of powers from EPA enables councils to regulate residential construction noise under this framework.

About construction noise

Noise from construction is often characterised by the presence of multiple intrusive noise sources that are also generally intermittent in nature. The nature of this noise can be disturbing. It also generally occurs over long periods of time, such as during the construction of large residential projects.

Find out more about [construction noise](https://www.epa.vic.gov.au/for-community/environmental-information/noise/construction-noise/about-construction-noise) (<https://www.epa.vic.gov.au/for-community/environmental-information/noise/construction-noise/about-construction-noise>) and its impacts on human health.

Activities that are considered residential construction

To decide whether the works fall under **repair or maintenance** of an existing residential building – Part A, or **residential construction** – Part B, consider:

- the activity's purpose
- its scale and
- who is responsible for managing the noise? Is it the homeowner or a registered builder?

As a general rule, Part B applies to:

- alterations to a building that increase or decrease the floor area or height of the building or require demolition of all or part of the home
- works that require a registered builder or certificate of consent for an owner-builder.

Apart from underpinning or replacing footings, most works to repair or maintain an existing residential building are exempt from building permit requirements. The need for a building permit may also be a useful indicator of whether the works are residential construction.

Council's role in regulating residential construction noise

Delegation to councils

EPA delegates additional powers and functions under the Act to councils. This enables councils to use the GED and unreasonable noise (non-residential premises) laws to regulate residential construction noise.

Appointment and powers of council authorised officers

The delegation from EPA allows councils to appoint their employees as authorised officers (AOs) under section 242(2) of the Act.

Council authorised officers have a limited set of powers that enable them to investigate and issue improvement notices and prohibition notices under the Act for residential construction noise issues.

Council authorised officers also have legal obligations under the Act, such as announcing their entry and identifying themselves to the occupier, or apparent occupier. They're also required to give the occupant a written report when they've exercised a power of entry and inspection.

See: Appendix 4: Council authorised officer (AO) powers for residential construction noise.

What the law says

General Environmental Duty

The GED (section 25 of the Act) is central to Victoria's environment protection laws. Anyone engaging in an activity that poses risk of harm to human health and the environment, from pollution or waste, must eliminate or reduce that risk. The general environmental duty applies to all Victorians.



This means those in management and control of construction and demolition activities must understand and proactively manage the risks of harm from noise to people near their building site.

Regulating residential construction noise under the GED allows councils to focus regulatory effort on preventing the impacts of noise, rather than prohibiting certain activities. Councils can then respond to community concerns about excessive construction noise based on the risks posed by residential construction activity and how effectively that risk is being managed.

Guidance and good industry practices provide the expected performance standards for managing and minimising risks.

Council authorised officers will assess whether those undertaking construction activities have appropriate controls in place instead of focusing on the noise level, characteristics or impacts that have occurred. See Assessing residential construction noise.

Section 25 General environmental duty

- (1) A person who is engaged in an activity that may give rise to risk of harm to human health or the environment from pollution or waste must minimise those risks, so far as reasonably practicable.

Read section 25 of the Act in its entirety at [legislation.vic.gov.au](https://content.legislation.vic.gov.au/sites/default/files/c14db06c-ee53-3924-8f92-6da83676aed2_17-51aa004%20authorised.pdf) (https://content.legislation.vic.gov.au/sites/default/files/c14db06c-ee53-3924-8f92-6da83676aed2_17-51aa004%20authorised.pdf).

Read more about [General environmental duty](https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty) (https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty) and [Reasonably practicable](https://www.epa.vic.gov.au/about-epa/publications/1856) (EPA Publication 1856) 9https://www.epa.vic.gov.au/about-epa/publications/1856).

Section 166 – Environment Protection Act 2017

As you've read above, regulating residential construction noise under the GED focuses on good practice controls and measures. In some circumstances though, there may not be a reasonably practicable control or measure. Or controls may be in place, but the noise is still affecting nearby residents.

In these cases, section 166 of the Act - unreasonable noise at non-residential premises, can be used as the basis for a notice to require changes on-site to minimise the noise.

Examples of noise issues from residential construction sites that may be hard for builders to control include vehicle delivery noise and where construction is occurring in high-density living or sensitive-use areas.

Section 166 Unreasonable noise

- (1) A person must not, from a place or premises that are not residential premises –
 - (a) emit an unreasonable noise
 - (b) permit an unreasonable noise to be emitted.

Investigating residential construction noise

When investigating a residential construction noise report, follow the same general Regulatory approach for residential noise complaints provided in Part A: Residential noise.

Note that while the principles and general investigation steps will be the same as Part A, there are some key differences for residential construction noise, including:

- how noise is assessed under the GED
- powers of entry and inquiry that council AOs can use
- the compliance and enforcement interventions available to council AOs.

Refer to Appendix 2: Investigation flowchart.

Assessing residential construction noise

Council authorised officers can use the following EPA guidance to assess whether builders or demolition companies are taking reasonable steps to minimise noise from their activities:

- Guidance about the [general environmental duty](https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty). (https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty)
- [Reasonably practicable](https://www.epa.vic.gov.au/about-epa/publications/1856) (EPA Publication 1856) (https://www.epa.vic.gov.au/about-epa/publications/1856)
- [Construction: Guide to preventing harm to people and the environment](https://www.epa.vic.gov.au/about-epa/publications/1820) (EPA Publication 1820) (https://www.epa.vic.gov.au/about-epa/publications/1820)
- [Civil construction, building and demolition guide](https://www.epa.vic.gov.au/about-epa/publications/1834) (EPA Publication 1834) (https://www.epa.vic.gov.au/about-epa/publications/1834)
- [Construction industry guidance](https://www.epa.vic.gov.au/for-business/find-a-topic/construction-industry-guidance) (https://www.epa.vic.gov.au/for-business/find-a-topic/construction-industry-guidance).

Table 3 sets out specific considerations for assessing against the GED or unreasonable noise from non-residential premises.

Table 3: Assessing residential construction noise under the GED and unreasonable noise from non-residential premises

Legal requirement	Assessing compliance
<p>General environmental duty – section 25</p>	<p>Assess residential construction noise under the GED by determining how well an individual or business:</p> <ul style="list-style-type: none"> • understands how their activities may create risks of harm to people or the environment from noise. • has put in place reasonably practicable measures to eliminate or reduce risks of harm from noise. <p>Assess if the person in management or control is using and maintaining:</p> <ul style="list-style-type: none"> • plant, equipment, processes and systems in a way that minimises risks. For example, by maintaining machinery and equipment to the manufacturer’s specifications. • systems for identifying, assessing and controlling risks • adequate systems to ensure that if harm eventuates the effects are minimised. <p>Have they provided information, instruction, supervision and training to people engaged in activities to ensure they comply with the above?</p> <p>It doesn’t matter whether there’s been an impact on people or the environment or not, the GED is breached whenever there is a risk of harm not being proportionally managed.</p> <p>In summary, look at whether good industry standards have been adopted, rather than focusing on the level and impact of the noise itself.</p> <p>With regards to the builder, contractor or owner-builder, your assessment should consider:</p> <ul style="list-style-type: none"> • the business – How well do they understand the inherent risks in their business that cause noise? How do you know? • the industry – What noise controls would you expect to be in place for this industry? How does that compare to other duty holders in a similar business? How do they fit into the hierarchy of controls? • risks and controls – What’s in place? How effective are those controls? How well are workers informed and competent in implementing these controls? • evidence – What kinds of evidence would you look for that could indicate how risks are being managed? • unmanaged risks – What additional reasonably practicable (https://www.epa.vic.gov.au/about-epa/publications/1856) controls would you recommend? • communication – How do you work with the builder, contractor or owner-builder to understand their risks and controls?

<p>Unreasonable noise- section 166</p>	<p>If you're using the unreasonable noise offence, use the same considerations that are described in Part A – How to assess if noise is unreasonable.</p> <p>The unreasonable noise offence relies on character or properties of noise. You need to consider the factors of the noise itself and whether this is reasonable in the context. For example, could more be done to reduce the level (intensity) of the noise or its duration?</p> <p>Guidance around construction, such as setting noise levels for evening work, could be used for assessing whether unreasonable noise has occurred.</p>
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Compliance and enforcement tools: Noise from construction, demolition and removal of residential premises

Although councils can't commence proceedings for an alleged breach of the GED or unreasonable noise (non-residential premises) laws, council authorised officers, can issue improvement notices or prohibition notices for residential construction noise issues.

EPA takes an escalating approach to compliance and enforcement. Figure 4 provides examples of how councils can consider applying this approach to residential construction noise.

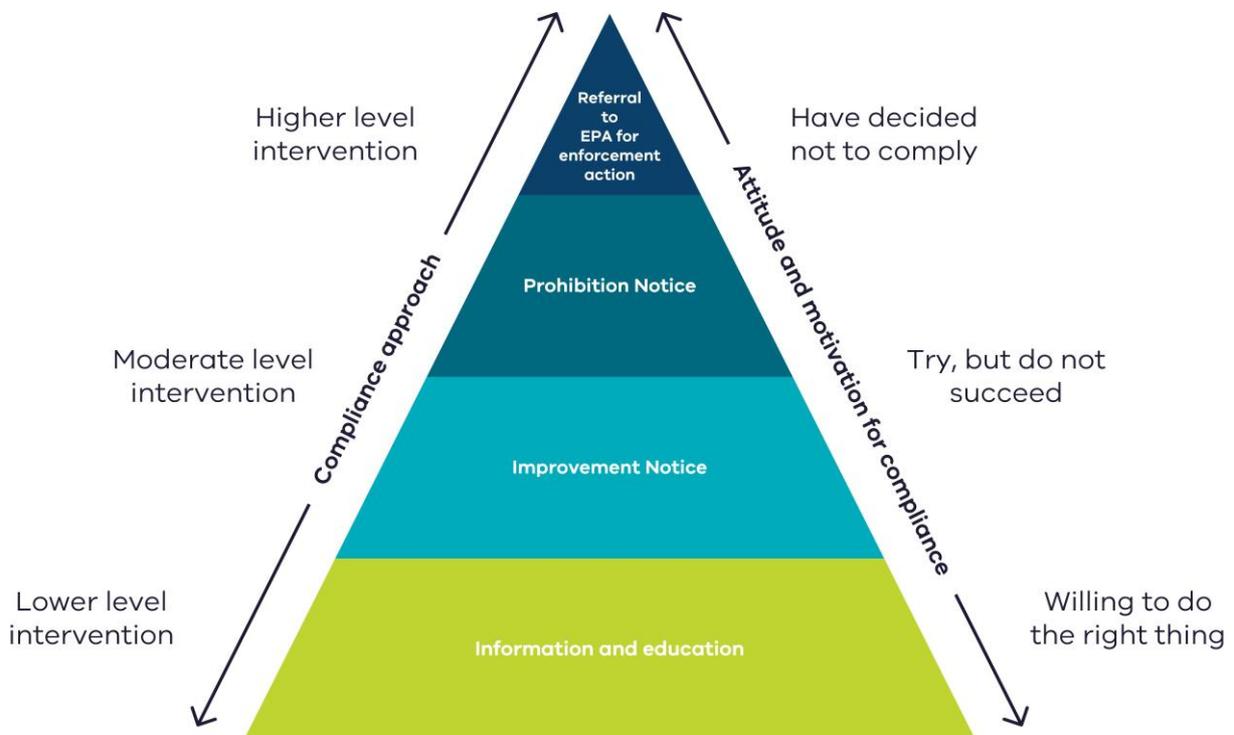


Figure 4: Compliance and enforcement approach to residential construction noise

Information and education

EPA guidance can be provided to builders or demolition companies to help them take reasonable steps to minimise noise from their activities. Refer to the guidance listed in *Assessing residential construction noise*.

Notices under the Act

Council AOs appointed under section 242(2) of the Act can issue **improvement notices** (section 271 of the Act) and **prohibition notices** (section 272 of the Act) using either the GED or unreasonable noise (section 166) as the grounds for the notice.



Notices are used to bring a person back into compliance with the law and set out the steps they must take to do so. The notices compel the recipient to comply with the actions outlined by the council AO in the notice. They ensure that there's a formal record that the council has required action to remedy a risk or prevent harm and that notice recipients are treated consistently. They also hold recipients to a timeframe to comply.

Detailed guidance for using these notices is provided in Appendix 5: Notices under the Act for residential construction noise.

EPA enforcement

Where a council AO detects non-compliance with an improvement notice or prohibition notice they issued under the GED or unreasonable noise (section 166), they can refer the offence to EPA for further enforcement action.



Only EPA can take enforcement action in relation to these notices - such as issuing an official warning or initiating court proceedings for breaches of the substantive requirements in a notice, or an infringement notice for breach of a reporting requirement.

Review of improvement notices and prohibition notices

A person who has received an improvement notice or prohibition notice has the right to apply to EPA for a review of the notice under section 429 of the Act.

Review of an improvement notice or prohibition notice can only be performed by EPA under the Act (even if a council AO issued the notice). Notice recipients can apply to EPA for a review by calling 1300 372 842 (1300 EPA VIC). If council receives review applications by mistake, email them to EPA immediately at internalreviews@epa.vic.gov.au.

Appendix 1: Other residential premises

Residential premises don't just include houses. There are other situations that may be considered residential premises. Councils, RNEOs and police have powers to act with regards to unreasonable noise from these other types of residential premises, including:

- organised care accommodation in a residential setting
- short-stay accommodation
- home-based businesses
- apartments

Who is responsible for unreasonable noise in these settings?

Section 167(1) of the Act applies to a person who emits unreasonable noise and a person who permits unreasonable noise to be emitted. This means it's not only the person making the noise who has a responsibility under this law. For example, a landlord may have caused or permitted unreasonable noise to be emitted if their property has a noisy air conditioner that they haven't replaced or made quieter. This is relevant when considering noise from the types of residential premises discussed in this Appendix.

Organised care accommodation

Organised accommodation in a residential setting like residential care for children and young people in community-based houses and disability supported accommodation can be residential premises. The residential noise laws apply in these settings.

Institutions that are not primarily used for residential purposes such as hospitals, health and aged care facilities, respite care and boarding schools are not residential premises. Laws that apply to noise emitted from these premises are the:

- GED – unreasonable noise (non-residential premises) under section 166.
- Regulations – Part 5.3 Division 3 - Unreasonable and aggravated noise from commercial, industrial and trade premises.

Short-stay accommodation

Short stay accommodation can be residential premises if it's in a residential setting, such as a private house or apartment. This doesn't apply to premises that aren't used primarily for residential purposes. For example, accommodation within public premises such as a hotel, motel or tourist establishment.

For short stay accommodation, the Act and the Regulations for residential noise apply to:

- the people staying at the accommodation
- the property owner, and
- any agent or property manager that lets the property.

Home-based business

Residential premises can include a home-based business. This means the residential noise laws apply to home-based businesses.

The Victoria Planning Provisions (VPPs) define a home-based business as an occupation carried on in a dwelling, or on land around a dwelling, by a resident of the dwelling (VPP 73.03

Land use terms). Clause 52.11 of the VPPs has requirements to ensure that the amenity of the neighbourhood is not adversely affected by a business conducted in or from a dwelling and considers amenity impacts including from vehicle parking, transporting material and goods and hours of operation.

Enforcing residential noise law under the Act is separate to any consideration of home-based business under the planning system. For home-based businesses, it's recommended that the planning scheme be used in the first instance. This is because a decision to grant a planning permit for the business will consider whether the site is suitable for the particular home-based business or not. It will also consider whether it's compatible with the surrounding use and development.

If the scale of the operation doesn't require a planning permit, any noise emission from the operation of the business at the residential property should be investigated as residential noise.

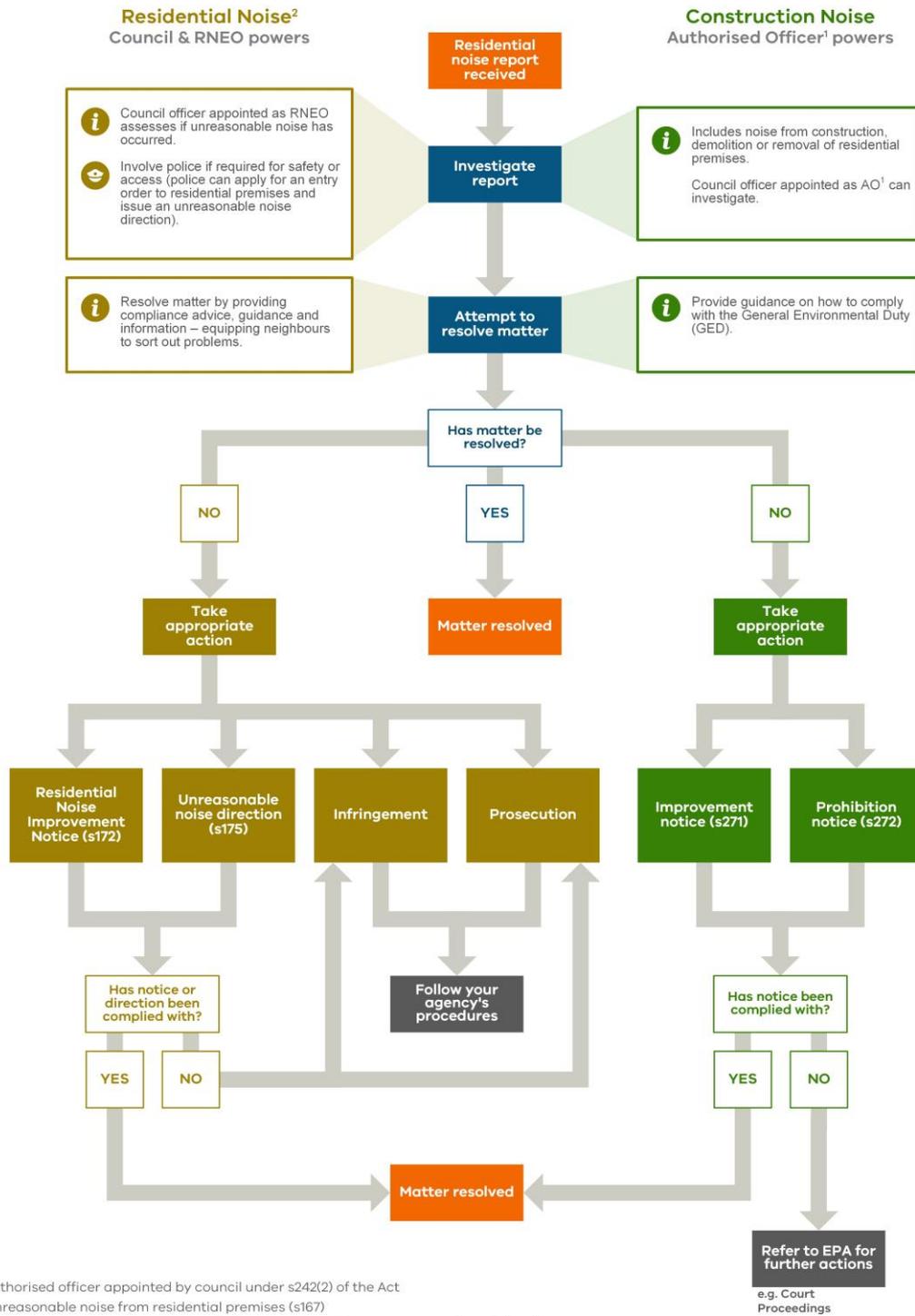
Apartments

Buildings with multiple dwellings such as apartments are residential premises. But plant and equipment used by all apartments collectively and controlled by the building owners or owners' corporation are not considered residential. Noise from these areas is assessed as commercial, industrial or trade noise under the Regulations. Such equipment includes car stackers, carpark roller doors, lift equipment and air conditioning or heating that services more than a single dwelling.

In addition, if buildings include commercial premises such as shops as well as apartments, only the parts of the land or building that are used for residential purposes are residential premises.

Appendix 2: Investigation flowchart

Investigating residential noise under the Environment Protection Act 2017



¹ Authorised officer appointed by council under s242(2) of the Act
² Unreasonable noise from residential premises (s167)
³ Under general environmental duty (s25) or unreasonable noise non-residential (s166). Refer to s165(b) of Environment Protection Act 2017 for meaning of residential premises.

Figure 5: Investigating residential noise under the Environment Protection Act 2017

Appendix 3: Compliance and enforcement tools for residential noise

Residential noise improvement notice

<p>What is it?</p>	<p>Residential noise improvement notices (Section 172 of the Act) can be issued to address ongoing or likely contraventions of Part 7.6 of the Act or the Regulations related to emission of noise from residential premises.</p> <p>A residential noise improvement notice can stay in place for period of time and specify what actions a person has to take. These factors make it a good tool to address noise issues that are likely to be recurring if changes to equipment or behaviour aren't made. For example, noisy pool pumps or use of powers tools during prohibited hours.</p>
<p>Who can issue this notice?</p>	<p>Only a council can issue a residential noise improvement notice. The council delegate will be listed in the notice.</p>
<p>Who can it be issued to?</p>	<p>A residential noise improvement notice can be issued to a person (meaning a natural person or body corporate) who a council reasonably believes:</p> <ul style="list-style-type: none"> • has contravened a provision of Part 7.6 of the Act or the Regulations relating to the emission of noise from residential premises in circumstances that make it likely that the contravention is continuing or will re-occur; or • is likely to contravene a provision of Part 7.6 of the Act or the Regulations relating to the emission of noise from residential premises. <p>These reasons for issuing the notice allow councils to require action from residents to stop ongoing noise issues or prevent occurrences. For example, when a resident persistently plays loud music, or has previously ignored warnings about their behaviour, this shows a clear risk that the person will or is contravening the Act.</p>
<p>What the notice requires a person to do?</p>	<p>A residential noise improvement notice may require the person to:</p> <ul style="list-style-type: none"> • abate (decrease or stop) the noise; or • do any other thing that the council reasonably considers necessary to prevent or minimise the noise. <p>Examples of requirements are not running the air conditioning at night, replacing an old air conditioner or relocating it.</p> <p>A requirement may be expressed to be general or limited in operation as to particular times, places or circumstances (section 172(3)).</p> <p>For example, a notice may require the person to stop the activity that emits the noise. It may also specifically require the person to reduce the noise level from an item of equipment by a certain amount in decibels.</p>
<p>How can notices be issued?</p>	<p>Use the template provided by EPA.</p> <p>Notices under the Act can be issued by:</p> <ul style="list-style-type: none"> • email • in person • mail

	<ul style="list-style-type: none"> • or by leaving it at the usual or last known address. <p>For more information refer to Section 344 of the Act - Service of documents.</p>
How long does the person have to comply?	The time period within which the person must comply with the notice must be stated in the notice. The delegated council officer will decide what is a reasonable time period to comply. The time period can also be extended by the council.
How is a notice revoked or amended?	By serving a written notice of amendment, the council can: <ul style="list-style-type: none"> • extend the time period that the person has to comply with the notice, or • revoke or amend any requirements in the notice.
How can VCAT review be requested?	A person served with a residential noise improvement notice can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision to issue the notice.
Are there consequences if a person fails to comply?	<p>If a person doesn't comply with a residential noise improvement notice, an RNEO can:</p> <ul style="list-style-type: none"> • serve an infringement notice • initiate court proceedings <p>The penalties that apply are listed in the Residential noise offences and powers section.</p>

Unreasonable noise direction

What is it?	<p>An unreasonable noise direction (section 175 of the Act) can be given if a RNEO or police officer reasonably suspect an offence against s167(1) – emit or permit unreasonable noise to be emitted – has occurred.</p> <p>An unreasonable noise direction can stay in place for up to 72 hours. This enforcement tool can be used by RNEOs or police officers on-the-spot, to compel a person to stop the noise immediately. It's often the next step when compliance advice alone hasn't been successful.</p>
Who can give a direction?	An unreasonable noise direction (section 175 of the Act) can be given by a RNEO or police officer.
Who can it be issued to?	<p>An unreasonable noise direction can be given to either:</p> <ul style="list-style-type: none"> • a person who has committed an offence against s167(1), or • someone apparently in charge of residential premises on which an offence against s167(1) is suspected of being committed. For example, this might apply to an adult in a household where unreasonable noise is being made by minors.
What it can require them to do?	A person can be directed to take action that a RNEO or police officer considers necessary to stop or prevent unreasonable noise from recurring.

How is it given?	<p>Section 175 doesn't specify how the direction must be given, however if given verbally, it's good practice to follow up with a written direction.</p> <p>Take notes or make a report to record the action you have taken.</p>
Are there consequences if a person fails to comply?	<p>If a person doesn't comply with an unreasonable noise direction, a RNEO or a police officer can:</p> <ul style="list-style-type: none"> • serve an infringement notice • initiate court proceedings. <p>The penalties that apply are listed in Table 1: Residential noise laws and penalties.</p>

Entry orders for residential noise

What is it?	<p>If no other measures to stop unreasonable noise from residential premises have been effective, under s176 of the Act, a court officer can make an order enabling a police officer to enter residential premises.</p>
Who can apply for an entry order?	<p>A police officer of or above the rank of senior constable can apply for an entry order. The police officer must reasonably believe no other measure would be effective to stop the noise.</p> <p>While councils can't apply for an entry order themselves, RNEOs may choose to request assistance from police to gain entry to residential premises. They may do this if they're dealing with a noise issue where the impact on other people is significant and the offender is being unresponsive or uncooperative.</p>
What does an entry order allow a police officer to do?	<p>If an entry order has been made, a police officer can:</p> <ul style="list-style-type: none"> • use such force as is reasonably necessary to gain entry to any residential premises from which unreasonable noise is being emitted to investigate the noise • give any direction under s175(2) that they believe is necessary to abate the noise.
What is obstruction of a police officer?	<p>Obstruction of a police officer while they're taking action under an entry order made under s176, is an offence (section 177 of the Act). A person must not:</p> <ul style="list-style-type: none"> • hinder, delay or obstruct a police officer, or • if the person is the occupier of any place or premises, refuse to permit a police officer to take any action they are authorised to take under the entry order. <p>A police officer can initiate court proceedings for an offence under s177.</p> <p>The penalties that apply are listed in Table 1: Residential noise laws and penalties</p>

Infringement notices

<p>What is an infringement notice?</p>	<p>An Infringement notice is a notice served for an alleged offence against the law (an 'infringement offence'), in accordance with the requirements under the <i>Infringements Act 2006</i>. An infringement notice may impose a financial amount (the "infringement penalty"), the payment of which may otherwise exiate an alleged offence.</p> <p>This allows certain offences (known as 'infringement offences') to be dealt with through payment of the infringement penalty, rather than through court proceedings. (The recipient of an infringement notice however may elect to have the alleged offence referred to be heard and determined in Court). The value of the infringement penalty is expressed in 'penalty units'.</p> <p>Official warnings</p> <p>Under section 8 of the Infringements Act, any issuing officer may serve an official warning rather than an infringement notice, if they consider it appropriate.</p>
<p>Who can issue infringements for residential noise related offences?</p>	<p>A RNEO or police officer may issue infringement notices for infringeable offences under Part 7.6 of the Act and the Regulations.</p> <p>This power comes from section 307 of the Act.</p>
<p>What residential noise offences are infringement offences?</p>	<p>The offences under the Act and Regulations that have an infringement penalty associated with them are listed in Schedule 10 to the Regulations.</p> <p>Infringement offences related to residential noise are listed in Table 1: Residential noise laws and penalties.</p>
<p>Who may receive an infringement notice?</p>	<p>An infringement notice can be served to a person believed to have committed an infringement offence. For residential noise infringement offences, this may be the person responsible for unreasonable noise, and/or who fails to comply with a notice or direction. It's important that RNEOs are familiar with the elements of each infringement offence.</p>
<p>How are infringement notices issued?</p>	<ul style="list-style-type: none"> • Councils follow their own processes for serving infringement notices. EPA does not need to approve the infringement notice format used, however it must comply with the requirements in the Infringements Act 2006 and associated Regulations. • Notices under the Act may be served by email, postal mail, leaving it at the usual or last known address, or in person. Refer to section 344, Service of documents.
<p>How can an infringement be disputed?</p>	<p>Under the Infringements Act 2006, recipients of an infringement notice may apply to have their infringement reviewed by the enforcement agency that issued it. Applications for a review must be made within 14 days of the applicant becoming aware of the infringement notice (section 64(c) of the Infringements Act 2006).</p>

<p>What happens if the person doesn't pay the infringement?</p>	<p>Councils have three options:</p> <ol style="list-style-type: none"> 1. Unpaid infringements may be referred to Fines Victoria who, for a fee, will pursue the recipient of the infringement to recoup the debt. 2. The infringement may be withdrawn, with the offence then pursued through the Magistrates Court. 3. Council may use a private debt collector to pursue the infringement amount.
<p>What are penalty units?</p>	<p>A penalty unit is a monetary amount that is fixed for a financial year by the Treasurer in line with CPI and is adjusted annually by the Department of Treasury and Finance (https://www.dtf.vic.gov.au/home).</p> <p>Offences under the Act and Regulations list the maximum number of penalty units that can be imposed by a court. The infringement offences listed in Schedule 10 of the Regulations, list the applicable penalty units for the infringement offence.</p> <p>Penalty units for both natural persons and body corporates are listed. Penalty units for body corporates are five times higher.</p>

Prosecution

<p>What is it?</p>	<p>A prosecution is a criminal proceeding, initiated in a Court of relevant jurisdiction, against a person alleged to have committed an offence against the law.</p> <p>Residential noise related offences under the Act and Regulations are summary offences that are considered less serious and have lower penalties than indictable criminal offences. Summary offences are heard in the Magistrates Court.</p> <p>The maximum penalties that a court can apply to residential noise offences are listed in Table 1: Residential noise laws and penalties.</p>
<p>Who may initiate court proceedings?</p>	<p>RNEOs and police officers can take proceedings for certain residential noise offences. This power comes from section 170 of the Act.</p> <p>Note that for an offence under 167(1) – unreasonable noise from residential premises – proceedings can also be initiated by a person claiming to be directly affected the by alleged offence. For example, the neighbour of a person emitting unreasonable noise.</p> <p>Offences related to improvement and prohibition notices must be referred to EPA who may initiate court proceedings.</p>
<p>What's the timeframe for court proceedings?</p>	<p>Criminal proceedings for an alleged summary offence must be commenced (via filing and service of charges against the accused), within 12 months after the commission of the alleged offence. For further details see the <i>Criminal Procedure Act 2009</i>.</p>

Injunction relating to residential noise

<p>What is it?</p>	<p>Injunctions relating to residential noise (s174 of the Act) can be granted by a Court (defined in the Act as either a Magistrates Court, County Court or Supreme Court), where a person has engaged or is proposing to engage in conduct that is a breach of any provision relating to residential noise under the Act or Regulations.</p> <p>An injunction is a Court order directing a person to do a specific thing or, more commonly, to not do a specific thing.</p>
<p>Who can apply for an injunction?</p>	<p>Council or a police officer can apply to the Court for an injunction.</p> <p>An application can be made for an injunction even if court proceedings have already been initiated for a residential noise offence under the Act or Regulations, for example by the council.</p>
<p>What can it require a person to do?</p>	<p>An injunction can:</p> <ul style="list-style-type: none"> • restrain a person from engaging in specified conduct that the Court reasonably considers to be the source of, or contributing to, the emission of noise, or • require a person to do a specified act or thing that the Court considers reasonably necessary to prevent, minimise or remedy the contravention.
<p>Are there consequences if a person fails to comply?</p>	<p>A person who doesn't comply with an injunction from a Court, may be held in contempt of court. This can result in the person being imprisoned.</p> <p>The council or police would need to bring proceedings for contempt of court if the injunction is not complied with.</p>

Appendix 4: Council authorised officer (AO) powers for residential construction noise

Council AOs appointed under section 242(2) of the Act, have a limited set of powers that can be used to investigate residential construction noise issues under the Act.

Act section	Authorised officer power	Description of authorised officer power that can be used to investigate OWMS
246	Authorised officer may enter and inspect any place or premises	<p>When can an AO enter and inspect?</p> <p>For the purpose of performing a function or duty, or exercising a power under the Act, an AO may enter and inspect a place or premises for the purpose of:</p> <ul style="list-style-type: none"> • determining if a person has contravened the Act or Regulations • monitoring compliance with the Act or Regulations • determining if there is a risk of harm to human health or the environment from pollution, waste or contaminated land • inspecting or testing equipment or a vehicle. <p>AOs may enter and inspect a place or premises at any reasonable time, including when open to the public.</p> <p>In circumstances where they believe there’s an immediate risk of material harm to human health or the environment, they may enter at any other time.</p> <p>What is material harm?</p> <p>Section 5 of the Act defines <i>material harm, in relation to human health or the environment</i>, as harm that is caused by pollution or waste that:</p> <ul style="list-style-type: none"> • involves an actual adverse effect on human health or the environment that is not negligible; OR • involves an actual adverse effect on an area of high conservation value or of special significance; OR • results in, or is likely to result in, costs in excess of \$10,000 (or a higher amount prescribed by the Regulations) being incurred in order to take appropriate action to prevent or minimise the harm or to rehabilitate or restore the environment to the state it was in before the harm. <p>Any one of the above may satisfy the definition of “material harm”.</p>
247	Entry and inspection of a place or premises when open to the public	<p>When can an AO enter and inspect?</p> <p>For the purpose of performing a function or duty, or exercising a power under the Act, an AO may enter and inspect a place or premises for the purpose of:</p> <ul style="list-style-type: none"> • determining if a person has contravened the Act or Regulations • monitoring compliance with the Act or Regulations • determining if there is a risk of harm to human health or the environment from pollution, waste or contaminated land • inspecting or testing equipment or a vehicle. <p>AOs may enter and inspect a place or premises at any reasonable time, including when open to the public.</p> <p>In circumstances where they believe there’s an immediate risk of material harm to human health or the environment, they may enter at any other time.</p> <p>What is material harm?</p> <p>Section 5 of the Act defines <i>material harm, in relation to human health or the environment</i>, as harm that is caused by pollution or waste that:</p> <ul style="list-style-type: none"> • involves an actual adverse effect on human health or the environment that is not negligible; OR • involves an actual adverse effect on an area of high conservation value or of special significance; OR • results in, or is likely to result in, costs in excess of \$10,000 (or a higher amount prescribed by the Regulations) being incurred in order to take appropriate action to prevent or minimise the harm or to rehabilitate or restore the environment to the state it was in before the harm. <p>Any one of the above may satisfy the definition of “material harm”.</p>

<p>248</p>	<p>Residential premises</p>	<p>Restrictions on entry to residential premises</p> <p>AOs must not enter and inspect premises that are used only for residential purposes except:</p> <ul style="list-style-type: none"> • with the consent of the occupier for the time being of the premises, or • if the AO reasonably believes that a person has contravened, is contravening or is about to contravene, the Act or Regulations, or • if the AO reasonably believes there's an immediate risk of material harm to human health or the environment. <p>In the circumstances in the last two dot points above, an AO may only enter and inspect in a part of the premises that the council AO believes is necessary for the purposes of determining if:</p> <ul style="list-style-type: none"> • a person has contravened, is contravening or is about to contravene, the Act or Regulations, or • if there is an immediate risk of material harm to human health or the environment. <p>Limitation on council AO powers</p> <p>Council AOs are limited from applying for a search warrant (section 261 of the Act). This limitation means that section 248(1)(b) does not apply to council AOs. This limitation is set out in a direction in respect to the delegation to councils.</p>
<p>249</p>	<p>Announcement on entry</p>	<p>Immediately on entering a place or premises, AOs must take all reasonable steps to notify the occupier or apparent occupier and show their identity card.</p> <p>The AO is not required to do this if it would unreasonably interfere with performing a function or duty or exercising a power under the Act, or cause unreasonable delay, or if the person has been notified in advance.</p>
<p>250</p>	<p>Persons assisting authorised officer</p>	<p>An AO may request the assistance of any person for the purpose of entry and inspection. For example, another council officer, police officer or interpreter.</p> <p>The occupier of person in management or control must allow the person assisting the AO access.</p>

<p>251 except 251(2)(h)</p>	<p>Powers on entry</p>	<p>What can an AO do during an inspection?</p> <p>An AO may do anything they reasonably believe is necessary to perform a function or duty or exercise a power under the Act. This may include (but is not limited to):</p> <ul style="list-style-type: none"> • inspecting, examining and making enquiries • taking and removing samples of a substance or thing • carrying out testing and examination • taking photographic, audio, video or any other type of recording • examining, copying or taking extracts from a document • inspecting, examining or testing any plant, equipment, vehicle or other thing • bringing equipment or materials to the place or premises • requesting the assistance of any person at the place or premises • taking any other action <p>An AO may carry out or cause to be carried out, any testing or examination or a thing, including testing of a thing that results in the destruction of that thing.</p> <p>Council AOs must take all reasonable steps to minimise any disruption caused by their entry and not remain at the premises longer than reasonably necessary.</p> <p>Limitation on council AO powers</p> <p>Council authorised officers are limited from using the power under section 251(2)(h) of the Act- that means they cannot seize and remove a thing connected with a suspected contravention. This limitation is set out in a direction in respect to the delegation to councils.</p>
<p>252 except s252(1)(c)</p>	<p>Authorised officer may require production of documents</p>	<p>During an inspection, a council AO may require documents necessary for the purpose of their investigation. They may also examine or make copies of documents.</p> <p>Limitation on council AO powers</p> <p>Council authorised officers are limited from using the power under section 252(1)(c) of the Act- that means they cannot retain a document or part of a document. This limitation is set out in a direction in respect to the delegation to councils.</p>

<p>253</p>	<p>Authorised officer may require information or answers</p>	<p>An AO who enters a place of premises may require information or answers from a person at the place or premises for the purpose performing a function or duty or exercising a power under the Act.</p> <p>An AO must only require information or answers if they reasonably believe that the person has knowledge of a matter or thing relevant to another person’s compliance with the Act or Regulations.</p> <p>Note that section 268 of the Act provides protection against self-incrimination with regards to powers under Part 9.3. This means that if providing information would incriminate the person, they may have a reasonable excuse not to provide the information. This excuse doesn’t apply to producing documents and only applies to individuals not companies.</p>
<p>254</p>	<p>Report to be given about entry and inspection of place or premises</p>	<p>If a council AO has used their powers of entry and inspection they must give the occupier or apparent occupier a written report about the entry to the premises, when they leave the premises, or as soon as possible after the AO leaves the place or premises.</p> <p>The report must be in writing and include:</p> <ul style="list-style-type: none"> • the time of the entry and departure • the purpose of the entry and inspection • a description of any actions taken at the place or premises • a summary of any observations of the AO at the place or premises • the procedure for contacting the AO for further details of the entry and inspection.
<p>259</p>	<p>Authorised officer may ask person’s name and address</p>	<p>An AO may ask a person to state their name and address if they reasonably believe the person has:</p> <ul style="list-style-type: none"> • committed, are committing or are about to commit an indictable offence against the Act or • they think the person can help them with their investigation of an indictable offence. <p>The AO must inform the person of their reasonable beliefs. If the person is suspected of committing an offence, the AO must give the person sufficient information to understand the nature of the offence.</p>

		<p>For offences relating to OWMS, this power could only be used by council authorised officers investigating indictable offences including:</p> <ul style="list-style-type: none"> • failure to obtain a permit • breach of a permit condition • breach of the general environmental duty <p>breach of compliance with an improvement or prohibition notice issued by the council AO.</p>
271	Improvement notice (issue)	<p>An AO may issue an improvement notice.</p> <p>Refer to Appendix 5.</p>
272	Prohibition notice (issue)	<p>An AO may issue a prohibition notice.</p> <p>Refer to Appendix 5.</p>
279	Amendment of notices	<p>An AO may amend an improvement notice or prohibition notice. This includes extending the period which the person has to comply with the notice or revoking or amending any requirement in the notice.</p> <p>Refer to Appendix 5.</p>
307 and 307(4)(f)	Serve an infringement notice for breach of a prescribed permission condition	<p>An AO may serve an infringement notice on a person who they reasonably believe has committed an offence against section 64 of the Act (breach of a prescribed condition of an OWMS permit).</p>

Appendix 5: Notices under the Act for residential construction noise

Improvement notice

What is it?	An improvement notice (section 271 of the Act) requires a person to take action to remedy a non-compliance with the Act and/or Regulations, including the GED, or unreasonable noise laws (non-residential premises) in relation to residential construction noise.
On what grounds may the notice be issued?	<p>An AO may issue a person with an improvement notice if the AO reasonably believes that the person:</p> <ul style="list-style-type: none"> • is contravening or has contravened the Act, Regulations or a subordinate instrument made under the Act, or • is not complying or has not complied with a permission (for example, OWMS permit) granted under the Act, or • has engaged in or proposes to engage in an activity that has caused or is likely to cause harm to human health or the environment from pollution or waste. <p>The notice must state the grounds on which it is issued.</p>
Who may issue this notice?	This notice can be issued by an AO, including a council AO, appointed under section 242(2) of the Act, in relation to OWMS.
Who may it be issued to?	In many cases, improvement notices will be issued to the person, meaning the natural person or body corporate/company, conducting the relevant activity.
What can the notice require a person to do?	Improvement notices may require a person to take any action that a council authorised officer reasonably considers necessary to address non-compliance with the Act or Regulations, or an activity that has caused, or is likely to cause harm.
How may notices be served?	<p>Notices under the Act can be issued by:</p> <ul style="list-style-type: none"> • email • in person • postal mail, or • leaving it at the usual or last known residential address (with a person apparently at least 16 years old). <p>For more information refer to section 344 of the Act - Service of documents.</p> <p>Use the template provided by EPA.</p>
How long does the person have to comply?	The period of time by which the person must comply with the notice must be stated in the notice. The council authorised officer preparing the notice will specify a reasonable length of time for which to comply. A notice recipient may seek review of, or amendment to the notice, including specified time frames, under the Act (see section 429 of the Act).

<p>How can a notice be revoked or amended?</p>	<p>By serving a written notice of amendment under section 279 of the Act, the authorised officer may:</p> <ul style="list-style-type: none"> • extend the period of time the person has to comply with the notice • revoke or amend any requirements in the notice.
<p>How is a review of an improvement notice requested?</p>	<p>A person who is issued an improvement notice from a council authorised officer may apply to EPA to have the decision to issue the notice reviewed, or to amend the notice (section 429 of the Act). Applications to EPA must be made within ten business days (after the day the notice is served).</p> <p>Notice recipients can request a review by calling EPA on 1300 372 842 (1300 EPA VIC). If council receives review applications by mistake, email them to EPA immediately at internalreviews@epa.vic.gov.au.</p>
<p>How is a VCAT review requested?</p>	<p>If the notice review process by EPA under section 429 is completed but the notice recipient still seeks further review, they may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision to issue the notice (section 430 and 431 of the Act).</p> <p>Applications for VCAT review must be made by the notice recipient within 15 days of EPA making its review decision. An applicant must seek review by EPA under section 429 the Act before seeking VCAT review of the decision (see section 431(2) of the Act).</p>
<p>Are there consequences if a person fails to comply?</p>	<p>It's an offence not to comply with the requirements in an improvement notice under section 286 of the Act, without reasonable excuse. Criminal or civil proceedings may be initiated for failure to comply.</p> <p>Only EPA may take enforcement action for alleged non-compliance with an improvement notice. Councils, therefore, need to refer alleged non-compliance to EPA, which will consider the appropriate action to take.</p>

Prohibition notice

<p>What is it?</p>	<p>Prohibition notices (section 272 of the Act) requires a person to stop an activity that involves an immediate risk of harm.</p> <p>Prohibition notices may come into immediate effect and may be followed by an improvement notice to address ongoing residential construction noise issues.</p> <p>A recipient is entitled to apply to the Authority for a stay of the decision to issue the notice, pending the outcome of any application for internal review under the Act (see section 429 of the Act).</p>
<p>What are the grounds for issuing this notice?</p>	<p>An AO may issue a person with a prohibition notice if the AO reasonably believes that the person:</p>

	<ul style="list-style-type: none"> • is contravening or has contravened the Act, Regulations or a subordinate instrument made under the Act, or • is not complying or has not complied with a permission (for example, OWMS permit) granted under the Act, or • has engaged in or proposes to engage in an activity that has caused or is likely to cause harm to human health or the environment from pollution or waste. <p>The notice may only be issued if, having regard to the immediacy of the risk and degree of harm that could occur, stopping an activity quickly is necessary.</p> <p>The notice must state the grounds on which it is issued.</p>
Who may issue this notice?	A prohibition notice may be issued by an AO, including a council AO, appointed under section 242(2) of the Act, in relation to residential construction noise.
Who may it be issued to?	Prohibition notices are issued to the person, meaning the natural person, body corporate or company, that's conducting the relevant OWMS activity.
What the notice requires a person to do?	The notice may prohibit the activity and may also require any other thing the AO reasonably considers necessary to prevent or minimise harm or risk of harm.
How can notices be issued?	<p>Notices under the Act can be issued by:</p> <ul style="list-style-type: none"> • email • in person • postal mail, or • leaving it at the usual or last known residential address (with a person apparently at least 16 years old). <p>For more information refer to Section 344 of the Act - Service of documents.</p> <p>Use the template provided by EPA.</p>
How long does it stay in place?	The notice must specify the date from which the prohibition takes effect, and the time period for compliance with the notice. A notice recipient may seek review of, or amendment to the notice, including specified time frames, under the Act (see section 429 of the Act).
How can a notice be revoked or amended?	<p>By serving a written notice of amendment under section 279 of the Act, the AO can:</p> <ul style="list-style-type: none"> • extend the time period that the notice is in effect, or • revoke or amend any requirements in the notice
How is a review of a prohibition notice requested?	A person who is issued a prohibition notice from a council AO may apply to EPA to have the decision to issue the notice reviewed, or to amend the notice (section 429 of the Act). Applications to EPA must be made within 10 business days (after the day the notice is served).

	<p>Notice recipients can request a review by calling EPA on 1300 372 842 (1300 EPA VIC). If council receives review applications by mistake, email them to EPA immediately at internalreviews@epa.vic.gov.au.</p>
<p>How is a VCAT review requested?</p>	<p>If the review process by EPA under section 429 is completed but the notice recipient still seeks further review, they may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision to issue the notice (section 430 and 431 of the Act).</p> <p>Applications for VCAT review must be made by the notice recipient within 15 days of EPA making its review decision. An applicant must seek review by EPA under section 429 the Act before seeking VCAT review of the decision (see section 431(2) of the Act).</p>
<p>Are there consequences if a person fails to comply?</p>	<p>It's an offence not to comply with the requirements in prohibition notice under section 287 of the Act, without reasonable excuse. Criminal or civil proceedings may be initiated for failure to comply.</p> <p>Only EPA may take enforcement action for alleged non-compliance with a prohibition notice. Councils, therefore, need to refer alleged non-compliance to EPA, which will consider the appropriate action to take.</p>

Contact EPA

epa.vic.gov.au

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